



THE CHAIRMAN

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

October 20, 2000

The Honorable John D. Dingell  
Ranking Member  
Committee on Commerce  
U.S. House of Representatives  
Room 2322, Rayburn House Office Building  
Washington, DC 20515-6115

Dear Congressman Dingell:

I am writing in response to your letter dated September 18, 2000, regarding listing standards on the American Stock Exchange (Amex). In your letter, you raised concerns about Amex's standards for the initial and continued listing process, as well as the Commission's oversight of this process, in light of the *Business Week* article that questioned the quality of Amex issuers. I have asked my staff to prepare the attached memorandum in response to your concerns.

It is important that self-regulatory organizations have clear quantitative and qualitative listing standards. Investors make assumptions about a particular marketplace based on those listing standards.

If companies are being routinely listed on Amex that do not satisfy Amex's quantitative listing guidelines, investors need to be on notice of this fact. As part of its routine inspection cycle, our Office of Compliance Inspections and Examinations is in the process of completing an inspection of Amex's listing program, which began several months ago. The inspection report will include specific findings and recommendations about Amex's initial and continued listing programs, which we would be happy to discuss with you when the report is finalized.

If you have further questions about this matter, please do not hesitate to contact me at (202) 942-0100.

Sincerely,

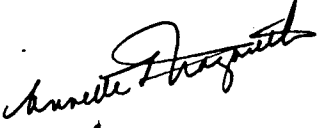
A handwritten signature in dark ink, appearing to read "Arthur Levitt".


Arthur Levitt

Enclosure

## MEMORANDUM

TO: Arthur Levitt, Chairman

FROM: Annette L. Nazareth, Director   
Division of Market Regulation

Lori Richards, Director   
Office of Compliance Inspections and Examinations

DATE: October 20, 2000

RE: Response to Congressman John D. Dingell Regarding Initial and Continued Listing Standards on Amex

This memorandum responds to Congressman Dingell's letter dated September 18, 2000, regarding listing standards on the American Stock Exchange (Amex or Exchange). Congressman Dingell raised concerns about the initial and continued listing process on Amex in light of the recent *Business Week* article dated September 11, 2000.

As a general matter, the Commission does not exercise direct jurisdiction over the listing of securities of specific issuers on an exchange. Each self-regulatory organization (SRO) has its own rules that govern listing on that marketplace. However, before adding to or amending any of these rules, the SRO must submit the proposed amendment to the Commission. The Commission's Division of Market Regulation will review the proposal to ensure its consistency with the purposes of the Securities Exchange Act of 1934 (Exchange Act), ascertaining whether the proposal is designed, among other things, to perfect the mechanisms of a free and open market and to protect investors and the public interest. Thus, the Commission is not involved in the listing determination of any particular security. The Commission, however, approves proposed SRO listing rules and conducts periodic inspections of SRO initial and continued listing programs to ensure that the SRO is complying with its rules and procedures.

Amex's listing standards are set forth in the Amex Company Guide, which sets forth certain quantitative and qualitative criteria to be considered in the original listing of securities on the Amex. Under the regular listing criteria in Section 101(a), the issuer must have total stockholders' equity of at least \$4 million and pre-tax income of at least \$750,000 in its last fiscal year or in two of its last three fiscal years. Under the alternate listing criteria in Section 101(b), issuers must have: (1) two years of operations; (2) stockholders' equity of at least \$4 million; (3) minimum public distribution of 500,000 shares, together with a minimum of 800 public shareholders, or minimum public distribution of 1,000,000 shares with a minimum of 400 public shareholders; and (4) an aggregate market value for its publicly held shares of \$15 million. However, Section 101 of the Guide stipulates that these criteria are only guidelines and that the approval of a listing application is solely at the discretion of the Exchange.

It would be inconsistent with the purposes of the Exchange Act if an SRO applied its quantitative standards in an inconsistent and arbitrary manner. If an SRO incorporates some discretion into its listing standards, investors are entitled to clear notice of the manner in which the SRO exercises such discretion and the actual composition of the marketplace. As the Commission has stated:

Since investors rightfully presume that the companies listed on the Amex meet the quantitative and qualitative guidelines, these [discretionary] provisions should not be used by the Exchange as a way to permit issuers to bypass the numerical requirements for listing. The Commission would be concerned to find the Amex routinely approving listing for issuers that have not met the quantitative guidelines.<sup>1</sup>

The Office of Compliance Inspections and Examinations (OCIE) is in the process of completing an inspection of Amex's initial and continued listing program, which began several months ago. In that inspection, OCIE is reviewing whether and how often Amex listed companies did not meet Amex's quantitative guidelines. In addition, we contacted Amex staff about some of the statistics cited in the *Business Week* article. From January 1, 2000, to August 31, 2000, Amex advised us that it listed 86 companies, 29 of which did not satisfy the quantitative standards in Section 101. Of the 86 companies, 48 had previously been quoted on the Over-the-Counter Bulletin Board (OTCBB). According to Amex staff, 11 of these 48 OTCBB companies did not satisfy the quantitative standards set forth in Section 101 of the Amex Company Guide. Of the 38 non-OTCBB companies that Amex listed this year, Amex advises us that 18 did not satisfy the quantitative standards in Section 101.

Although OCIE has not completed its inspection, these numbers indicate a need for more consistency in the application of Amex's quantitative and qualitative listing criteria. We will brief Congressman Dingell's staff on the findings and recommendations of our inspection once the Commission has had an opportunity to review and approve the issuance of the inspection report.

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<sup>1</sup> See 65 FR 58136 (September 27, 2000) (order approving amendments to Amex listing standards that provide for the review of listing determinations).